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IN THE  
**Supreme Court of the United States**

October Term 1967

No. 247

THE PUYALLUP TRIBE, A Federal Organization,  
*Petitioner,*

v.

DEPARTMENT OF GAME OF THE STATE OF WASHINGTON,  
AND THE  
DEPARTMENT OF FISHERIES OF THE STATE OF  
WASHINGTON,  
*Respondents.*

**ON WRIT OF CERTIORARI**  
**To the Supreme Court of the State of Washington**  
**PETITION FOR REHEARING**

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PUYALLUP TRIBE, the Petitioner above named, presents this, its petition for a rehearing in the above entitled cause, and, in support thereof, respectfully shows:

**I**

The Court states that this case is of public importance. It is the position of the Petitioners that the small wealthy minority group consisting of sportsmen and commercial interest are acting under the pretense of public interest in attempting to usurp from the Indians their fishing right. The Indian

rights are owned legally through aboriginal ownership as well as treaty ownership. It is a well established fact that the average citizen cannot afford the expense of fishing gear and equipment that it takes to participate in commercial or sports fishing.

## II

The Court, in its opinion, has clearly failed, to apply the rule that any Indian Treaty right that has been reserved by Federal Treaty may be exercised by that tribe within their reservation boundaries without restriction. This rule has been so well accepted that at one time of oral argument before the United States Supreme Court the Respondents conceded this rule of law. It is the contention of the Petitioners that once the original boundaries of the Puyallup Indian Reservation were surveyed and staked out pursuant to Article II and VI of the Treaty of Medicine Creek and as enlarged by executive order of January 20, 1857 and September 6, 1873, those surveyed and staked out boundaries set the limits within which certain property rights and activities provided for in the treaty (including the on reservation fishing rights) could thereafter be exercised under exclusive tribal supervision, and the alienation of land pursuant to federal allotment acts had no effect upon those boundaries as to those rights and activities that do not depend upon actual Tribal ownership of land. *Moore v. United States*, 157 Fed. 2d 760 (1946); *United States v. Winans*, 198 U.S. 371 (1905); *Pioneer Packing Co. v. Winslow*, 159 Wash. 655, 294 Pac. 557 (1930); Cohen, *Handbook of Federal Indian Law*,

pages 285, 286. We find further support for our position in the opinion of Mr. Justice Black as he expressed it in the case of *Seymour v. Superintendent*, 368 U.S. 351, 356-359, with which decision we fully agree.

### III

The Court, in its opinion, has clearly failed to apply the intent of the signators of the Medicine Creek Treaty as to the fishing rights reserved by the Puyallup Indian Tribe in their usual and accustomed fishing grounds. The State, in the trial court, introduced in evidence the Minutes of the Medicine Creek Treaty stipulated to by both Respondent and Petitioners. The proceedings of the Medicine Creek Treaty conference makes no mention of the term "in common with other citizens". The exact wording of the proceedings in Article II is "the right of fishing at common and accustomed places is further secured to them." File Microcopies of Records in the National Archives: No. 5 Roll 26, Records of the Washington Superintendency of Indian Affairs, 1853-1874, Records relating to Treaties, December 7, 1854 - June 9, 1863, The National Archives, Washington: 1945.

The history of the Puyallup Indian Tribe indicates that immediately after the Medicine Creek Treaty Conference, dissatisfaction arose which caused considerable hostility between the various bands of Indians and the non-Indians bringing about warfare, which ultimately led to the Fox Island Conference of August 4, 1856 (Which conference was called pursuant to Article VI of the Medicine Creek Treaty),

at which time the Puyallup Indian Reservation was enlarged and at that time the remarks of Governor Stevens would again indicate the importance of the fishing rights in which he made the following statement:

"offering you for fishing privileges one half of the waters of the river and the sound, offering to protect you in your rights and also offering to educate your children."

Further evidence as to the importance of the fishing right to the Puyallup Indians is given in the report by M. T. Simmons Indian Agent in his report of June 30, 1858 to the Bureau of Indian Affairs wherein he states:

"the minor reserves, such as the Puyallups, Nisqually, Squaksin, were intended for farms, fishing stations, etc. for each particular tribe".

#### IV

Your Petitioner believes that this decision is subject to numerous interpretations and the State will interpret this in such a manner as to give the greatest possible fishing right to the commercial and sports group. This would require the Puyallup Indian Tribe to again defend its rights. The State has available to itself, large sums of tax-payer dollars, while the Indians have very little money and ultimately they are forcing the Indians into court, the Indians would be unable to defend because of lack of money and such will lose their valuable treaty fishing right.

The Petitioner does not believe that such fear is unfounded because the State of Washington ruling on this very tribe and on these very facts in 1957 in the

case of *State vs. Satiacum*, 50 Wn. 2d 524, 314 P. 2d 400 (1957) rendered a decision recognizing the Indian Treaty Fishing right. The Petitioners herein followed that decision, but the State of Washington refused to be bound thereby. Not only did the State of Washington refuse to be bound by their own case decision, but also refused to be bound by the 9th Circuit Court of Appeal decision of *Maison v. Confederated Tribes of the Umatilla Indian Reservation*, 314 F. 2d 169 (C.A. 9th, 1963). It is the contention of your Petitioners herein that the guidelines set forth in the *Umatilla* and *Satiacum* cases are guidelines that will protect the fishing rights of the Indians.

## V

In 1875 Congress passed an act that provided for approval of allotments by the Secretary of the Interior. The Secretary of Interior under said Act was to issue patents in the name of the allottees, which patent had the effect and declared that the United States held the land allotted for a period of twenty-five years in trust for the sale, use and benefit of the Indians to whom such allotment shall have been made. In 1884, the Puyallup Tribe received 167 allotments. There were no other allotments issued within the Puyallup Reservation.

The three-man Commission was authorized to sell the surplus lands of the Puyallup Reservation. Milray points out there were some 23,000 acres belonging to the Puyallup Tribe. (A 193) The Bureau of Indian Affairs up to 1928 took from the Puyallup Tribe,

over One Million Dollars from the sale of this land for the subsistence of the Reservation.

### CONCLUSION

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, the judgment of the Supreme Court of the State of Washington be reversed.

FRANK WRIGHT,

Chairman of Puyallup Indian Tribe.

### CERTIFICATE OF COUNSEL

The foregoing petition for rehearing was prepared under direction of the majority of the Puyallup Tribal Council and all issues, wording and reasons for the petition was at their request and instruction. That I, Arthur Knodel, prepared this petition for rehearing in the manner in which they directed. I certify that in my opinion this petition prepared by the majority of the Puyallup Tribal Council was prepared by them in good faith and not to delay.

ARTHUR KNODEL,

*Attorney for Petitioners.*

June 20, 1968.

